
LEGALISATION OF SAME-SEX MARRIAGE IN INDIA

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ABSTRACT

This paper explores the imperative need for legalizing same-sex marriage in India, a diverse and dynamic nation with a rich tapestry of cultures and traditions. While the global discourse on LGBTQ+ rights has made significant progress, India continues to grapple with the absence of formal legal recognition for same-sex unions. Through a comprehensive analysis of legal, social, and ethical dimensions, this paper elucidates the compelling arguments in favour of legalizing same-sex marriage.

The paper begins by delineating the historical context of LGBTQ+ rights in India, highlighting the gradual but steady evolution of societal attitudes and legal frameworks. It then delves into the international perspective, emphasizing the global trend toward recognizing the fundamental human right to marry irrespective of gender. Drawing from legal precedents, the paper elucidates the constitutional grounds for asserting that the denial of same-sex marriage infringes upon the principles of equality, dignity, and freedom enshrined in the Indian Constitution.

Moreover, this paper addresses the socio-cultural implications of legalizing same-sex marriage, debunking common misconceptions and fears. It explores the potential benefits such as enhanced social inclusion, economic advantages, and improved mental health outcomes for LGBTQ+ individuals and families. Additionally, it counters arguments against same-sex marriage as well. As it is a well-established fact that the legalization of same-sex marriage will amount to a societal revolution which shall receive a lot of criticism even with an introduction to such an idea.

Furthermore, the paper discusses the importance of bridging the gap between legal recognition and social acceptance. It emphasizes the role of education, awareness campaigns, and community engagement in fostering a more inclusive society.

In conclusion, this paper advocates for the urgent need to legalize same-sex marriage in India, recognizing it as a crucial step toward upholding the principles of equality and justice for all citizens. By embracing diversity and inclusivity, India can reaffirm its commitment to human rights and set an example for the world in the pursuit of a more equitable and just society.

INTRODUCTION

Marriage is one of the widespread social organizations laid out to control and direct the existence of humankind. It is firmly connected with the organization of family. In fact both the organizations are reciprocal to one another. It is a foundation with various ramifications in various societies. Its motivations, works and structures might contrast from one society to another however it is available in every society as an institution.¹ Similarly, Robert Lowie, who was an Austrian born - American Anthropologist who has played a significant role in the field of anthropological roles with his works such as *Primitive Society*, *Culture and Ethnology* and *Social Organization*. He describes marriage as a relatively permanent bond between permissible mates². While looking at the cultural and sociological aspect, marriage is described as a union of two people who come together physically, emotionally and financially. This is a common understanding of what a society perceives out of the true essence of marriage.

Society views marriage as a most sacred relationship where the two individuals come together and form a relationship of mutual trust and co-dependency herein the people are bound by loyalty and respect for each other³. Similarly, in a same-sex marriage as well the couples are bound by these social terms and need the essence of respect and loyalty with deep-emotional connect just as we expect between a heterosexual couple. This establishes that society holds a high standard while talking about marriage. This is also the reason that in some cultures marriage is not a union of two individuals but a relationship between two families.

The problem that arose with respect to the concept was when the society becomes stringent and rigid in its approach mandating that such union is possible only between a man and a woman. It is high time that we realize that the important aspect in the arrangement of marriage is not the sex of the people entering into such union but to ensure that they have components of love, trust, dignity, respect and loyalty among themselves.

The society now has changed its social boundaries and looks beyond the existing forces which have been created. In India the struggle for the recognition and the rights of LGBTQIA+ community have been a challenging one as it is not an easy task to change an age-old stereotype

¹ Amit Khawas, Indian Institute of Legal Studies, <https://www.iilsindia.com/study-material> (last visited Oct 12, 2023)

² Types of Marriage, <https://www.sociologyguide.com/marriage-family-kinship/Types-of-marriages.php> (last visited Oct 12, 2023)

³ Marriage as Social Institution, <https://ugcmooocs.inflibnet.ac.in> (last visited Oct 12, 2023)

and perspective of people. But still such struggle cannot be the reason to keep our society stagnant in its approach. Change is a necessary evil which has to exist and one of such change which is necessarily the need of the hour is legalisation of the same-sex marriage.

HISTORY OF LGBTQ+ RIGHTS IN INDIA

Frequently "LGBTQ+" is named to be a cutting edge peculiarity or a metropolitan elitist idea be that as it may, Indian history and fantasies recount an alternate story out and out. Ved Vyas' incredible Mahabharat specifies a vital person who was "neither a man nor a lady"- Shikhandi, one of the most famous characters related with LGBTQ+ people group. Shikhandi was brought into the world with female genital organs yet was brought up a child and showed fighting and statecraft by their father King Dhruvad.⁴

The Dharmashastras esteemed hetero marriage and sex that brought about creation of children. Be that as it may, they recognized, though hesitantly, the presence of different types of non-vaginal sex, hetero as well as gay, and looked to control them with fines and compensation, without unmistakably censuring them in strict or moral terms.⁵

Kamasutra makes reference to the fact that lesbians were designated "Swarinis", who frequently wedded one another and brought up children together.⁶ Moreover, Kamasutra alluded to trititiya prakriti, or the third idea of individuals who can't be named men or ladies. Pali writing, for example, Vinaya Pitaka talks about 'pandakas' who couldn't be obliged in either the male or female areas of Buddhist viharas.⁷

LGBTQ+ impact was not restricted to texts, however it additionally tracked down its direction into sanctuary craftsmanship. In the sanctuaries of Khajuraho, there are pictures of ladies suggestively embracing different ladies and men showing their genitals to one another. Researchers have commonly made sense of this as an affirmation that individuals took part in gay demonstrations.⁸

⁴ Devdutt Pattanaik, On Krishna's chariot stands Shikhandi (2023), <https://devdutt.com/on-krishnas-chariot-stands-shikhandi> (last visited Oct 13, 2023)

⁵ Gender Fluidity In Hinduism (2023), <https://devdutt.com/gender-fluidity-in-hinduism> (last visited Oct 13, 2023)

⁶ What do Manusmriti and Dharmashastra have to say about homosexuality?, <https://devdutt.com/what-do-manusmriti-and-dharmashastra-have-to-say-about-homosexuality>, (last visited Oct 13, 2023)

⁷ A Brief History of LGBTQ+ in India (2021), <https://newsletter.sscbs.du.ac.in/a-brief-history-of-lgbtq-in-india>, (last visited Oct 13, 2023)

⁸ The Hijra Legacy, <https://devdutt.com/the-hijra-legacy>, (last visited Oct 13, 2023)

The transsexual local area was belittled in bygone eras by Muslim and Hindu leaders of the land. They were artists and artists and performers frequently utilized to serve the ladies' quarters. They were welcomed during weddings and labors to favour, introduce ripeness and ward away pernicious spirits.⁹

The coming of the Britishers, who were devotees of Christianity, prompted another turn of events. The English rulers proclaimed transsexual people and different performers as Criminal Tribes.¹⁰ Another legal development occurred was the formation of a Penal Code in 1860, wherein Section 377 was embedded which punished "*carnal intercourse against the order of nature*". Therefore, this gave rise to the need in the present day society for removal of such provisions and move a step towards giving recognition to the LGBTQIA+ community.

In India the struggle for the recognition of LGBTQ+ Community can be dated back to the PIL filed by the Naz Foundation¹¹ along with an NGO named NACO which worked for providing awareness about the prevention of HIV, AIDS etc. The petition was filed in the Delhi Court challenging the constitutionality of S.377 of the IPC. The petitioners contended that S.377 is discriminatory and is a violation of A.14, 15, 19 and 21 of the Indian Constitution. Further, this section discriminates against sexual minorities and imposes punishment on private consensual relationships of the LGBTQ+ community.

Taking the cognizance of the contentions of the petitioner the court gave its judgment on three grounds that:

1. The section referred in the petition is violative of A.21 as it is against the Right to Dignity and Privacy.
2. The court also observed that criminalizing homosexuality pushes homosexuals into isolation and prevents spreading awareness for the prevention of HIV, AIDS etc.
3. The third observation was made in lieu of the International Instruments to which India was a signatory and needs to commit to address the rights of reproductive health and

⁹ Prabhash K Dutta, Homosexuality in ancient India: 10 instances, July 10, 2018, <https://www.indiatoday.in/india/story/10-instances-of-homosexuality-among-lgbts-in-ancient-india-1281446-2018-07-10> (last visited Oct 13, 2023).

¹⁰ The Hijra Legacy, <https://devdutt.com/the-hijra-legacy>, (last visited Oct 13, 2023)

¹¹ Naz Foundation vs Government Of Nct Of Delhi, Delhi High Court, July 2, 2009, WP(C) No.7455/2001, <https://main.sci.gov.in/jonew/judis/41070.pdf> (last visited Oct. 14, 2023).

the rights of groups with the high risk of contracting HIV. It was also identified that the right to control one's body includes the right to be free from interference and provides non-discrimination and equal treatment to access all healthcare.

The decision given by the High Court of Delhi was in favour of the petitioners and S.377 was declared to be a violation of the fundamental rights.

The second step towards this prolonged history is an institution of an appeal against the judgment of the Naz Foundation Case given by the Delhi HC which was filed by Suresh Kumar Koushal.¹² As the appellant in the case contended that there was not enough evidence to show that S.377 is used arbitrarily. Further, it was contended that even the fundamental rights are not absolute in nature and come with certain restrictions. At last the contentions were concluded by stating that the defendants have no authority to determine morality but it is the duty of courts. Therefore, the Supreme Court of India overruled the judgment of Delhi High Court and stated that there is no evidence of abuse against minorities and the punishment under the section is not against the people but only if the act is against the order of nature. The court also laid out the Miniscule Fraction and with these observations S.377 of IPC was given the stamp of approval by the court.

Post this judgment the issue with respect to the right of recognition for a male having a female orientation and vice-versa and whether transgenders have a right to be categorized as third gender was raised in the case of NALSA v. Union of India.¹³ In this case the Supreme Court held that A.14 to 16, A.19 and A.21 of the Indian Constitution recognizes gender identity and discriminating against someone based on their gender identity, would amount to violation of their Fundamental Rights under the afore-stated Articles.

In pursuance of this judgment it was directed to the Central and State Governments to take necessary steps for the welfare of the transgender community and give them recognition as third gender as in consonance to Part III of the Indian Constitution. Hence, the Transgender

¹² Suresh Kumar Koushal vs. Naz Foundation, Supreme Court in India, Dec. 11, 2013, CIVIL APPEAL NO.10972 OF 2013, Supreme Court Cases, <http://docs.manupatra.in/newsline/articles/Upload/E2A84BBD-B1F0-417C-8E82-49436B6FCA4B.pdf> (last visited Oct. 14, 2023).

¹³ NALSA vs. Union of India, Supreme Court, Apr. 15, 2014, WRIT PETITION (CIVIL) NO.400 OF 2012, Supreme Court Cases, <http://docs.manupatra.in/newsline/articles/Upload/FC172F97-B266-4AA2-8739-0BDB7E2D966C.pdf> (last visited Oct. 14, 2023).

Persons (Protection of Rights) Act, 2019 came into force with an aim to create a more inclusive and equitable society for all by providing legal recognition, protection and welfare.

The final stone that was turned while dealing with the rights for the LGBTQ+ community was in the landmark judgment of Navtej Singh Johar.¹⁴ This case in its judgment covered various rights with respect to Right to Sexuality, Sexual Autonomy, Choice of Sexual Partner and Privacy. It was in this case that the court held that consensual relationships are not a criminal offense. Henceforth, the court decided to decriminalize S.377 of the Indian Penal Code as it was violative of A.14, A.19(1)(a) and A.21 of the Indian Constitution.

These series of case laws and the constant struggle brought society at a pedestal wherein the recognition with respect to the identity of LGBTQ+ community was given but the will to get equal rights and opportunities was yet to be achieved. One of such rights that we aim to recognize and work for its legalization is the right to get married to the choice of their partner without any discrimination upon the gender i.e., the same-sex marriages.

These series of judgments were essentially a stepping stone which aided the discussion and finally to achievement for the legal recognition of the LGBTQIA+ community as well as decriminalization S.377 of the IPC. Although these judgments solely aided the legal recognition and dealt with certain aspects of civil rights, there were loopholes that could be established in the system which specifically dealt with the social rights available to this community. Despite all the struggle, people belonging to this community still lacked respect and recognition from society.

SOCIETAL COMPLICATIONS

The legalization of same-sex marriage in India is a complex and sensitive issue, and it faces several societal challenges that need to be addressed. These challenges arise due to a combination of cultural, religious, and traditional factors, as well as a lack of awareness and understanding of LGBTQ+ issues. Here are some of the key societal challenges that can be identified by the author:

¹⁴ Navtej Singh Johar vs Union Of India, Supreme Court, Sept. 6, 2018, WRIT PETITION (CRIMINAL) NO. 76 OF 2016, <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/> (last visited Oct. 14, 2023).

1. The Cultural and Religious Beliefs of People - India is a diverse and a culturally rich country and some of these religions do not accept the same-sex relationships and consider them to be against the order of the society. The set back that often comes is that the culture and religion in the Indian society is deeply ingrained due to which the resistance towards the change is directly proportional to the faith and rigidity that people have towards religion and culture.¹⁵
2. Social Stigma and Discrimination - The problem of homophobia is widespread in Indian society. LGBTQ+ people frequently experience assault, bullying, and discrimination. People may be discouraged from openly declaring their sexual orientation or from engaging in same-sex relationships due to fear of social stigma.
3. Representation By The Media - Public opinion is significantly shaped by the media. The lack of diverse and positive depiction of LGBTQ+ people in the media might contribute to the spread of misconceptions and stereotypes.¹⁶
4. Question of Family Values - In India, the idea of a family is frequently firmly anchored in traditional beliefs. Families may oppose same-sex relationships, making it challenging to win their support. Further, it is also a common nature wherein the individuals decide not to come out and accept their sexual orientation owing to the fear of rejection and abandonment from the families.

A multifaceted strategy combining education, awareness raising, legislative changes, and communication amongst various stakeholders, which also includes religious and community leaders to address these societal issues. In order to overcome these obstacles and create a more inclusive society, legalizing same-sex marriage in India will probably take some time. Patience, tenacity, and understanding will be necessary.

The sole ground of society not being accepting towards the LGBTQ+ community cannot be a ground to stop the social change. The idea of being something good for one section of the society can be called a bad idea for the other section but we as a society need to understand that to uplift its horizon and keep with the pace of development it is necessary for us to legalize the idea of same-sex marriages. Sociology defines a social change as changes in human

¹⁵ Aparna Goswami, Same Sex Marriages In India, 2020 journal For Law Students and researchers.

¹⁶ The Research Repository @ WVU, <https://researchrepository.wvu.edu/cgi/viewcontent>. (last visited Oct 15, 2023).

associations and connections that change social and social organizations.¹⁷ These progressions happen over the long haul and frequently have significant and long haul ramifications for society. Connections have changed, foundations have changed, and social standards have changed because of these social change developments.

Thereby, it is interpreted that a change is the only constant in the society and it is a general human nature of being repulsive of any change in the existing circumstance that they are habitual of but for the progression of the society as a whole slight discomfort at some level is necessary.

INTERNATIONAL REFERENCES

Several countries around the world have taken steps to legalize same-sex marriage, recognizing it as a fundamental human right. Notably, nations such as the Netherlands, Canada, South Africa, the United States, and many European countries have already embraced marriage equality. This global shift reflects the recognition that love and commitment should be celebrated irrespective of gender, and the role of the state in upholding individual rights and freedoms.

Some of the major references that could be made or the countries which can serve as an inspiration for the legalisation of the same-sex marriage:-

1. The Netherlands: The Netherlands became the first nation in history to approve same-sex unions in 2001. Their experience can be a useful point of reference for India as it attempts to comprehend the legal environment, social acceptability, and real-world effects of this kind of transformation.¹⁸
2. The United States of America: Significant progress has been made in the US in recognizing the rights of LGBTQ+ people, as evidenced by the 2015 legalization of same-sex unions. The path from court cases to widespread acclaim provides insights into the difficulties and opportunities that India may face.¹⁹

¹⁷ What is Social Change and Why Should We Care?, Southern New Hampshire University - Online & On Campus Degrees | SNHU, <https://www.snhu.edu/about-us/newsroom/social-sciences/what-is-social-change> (last visited Oct. 16, 2023).

¹⁸ Same-Sex Marriage Around the World, Pew Research Centre's Religion & Public Life Project, <https://www.pewresearch.org/religion/fact-sheet/gay-marriage-around-the-world/>(last visited Oct. 17, 2023).

¹⁹ Supra note. 18

3. South Africa: When it comes to accepting same-sex marriage in a country with a diverse population of ethnic and religious backgrounds, South Africa is a model. India may learn a great deal from its experiences handling these challenges.²⁰

The list of countries legalising same-sex marriage is not exhaustive to these three examples cited. In total there are about 34 countries which have till now given a legal recognition to the same-sex marriage. The international references provide inspiration as well as a practical guidance for a country like India which is navigating towards such a crucial issue.²¹

Nations that have sanctioned same-sex marriage act as standard setters. At the point when various nations embrace marriage uniformity, it lays out a worldwide standard that can impact the public view of the issue in India. It shows that this is a perceived and acknowledged practice in many regions of the world. It's critical to take note of that while international references are important, the way to legitimizing same-sex marriage in India will be impacted by its one of a kind social, cultural, and political settings.

Moreover, India has been a signatory to the Universal Declaration of Human Rights which clearly specifies in its articles that individuals shall be entitled with the rights and freedoms, and no individual shall be discriminated against on the grounds of race, sex, religion, colour, birth or any other status. Similarly, the A.3 of the UDHR clearly specifies that everyone has the right to life, liberty and security.

Therefore, it is derivative of the fact that these international conventions uphold the principles of equality, non-discrimination, and the protection of human rights for all, regardless of sexual orientation. Hence, these conventions can be used to make a case for legalizing same-sex marriage in India as it has now taken a shape of international obligations and guidelines. As in accordance with the A.253 of the Indian Constitution it is mandated that the legislation shall be giving effect to any foreign treaty, agreement or conference etc to which they are a part of. But still it is a general provision and a loophole to this article is that every state is a sovereign due to which their independence or sovereignty cannot be compromised for such applicability

²⁰ Supra note. 18

²¹ Marriage Equality Around the World, Human Rights Campaign, <https://www.hrc.org/resources/marriage-equality-around-the-world>(last visited Oct. 15, 2023).

and international laws usually have a persuasive value and seek for consent of a nation.²²

CONSTITUTIONAL GROUNDS

The demand for legalisation of same-sex marriage is well within the constitutional ambit and not legalising the same amounts to violation of an individual's fundamental rights as given under Part III of the Indian Constitution. Here are some key constitutional provisions that could potentially support the legalization of same-sex marriage in India

I. A.14 EQUALITY BEFORE THE LAW:

A.14 of the Indian Constitution embodies the principle of equality before the law and prohibition of any unreasonable discrimination among the people. The term "equality before the law" in the section denotes that the law should be applied equally to all people and that similar cases should be handled similarly. All citizens of legal age and understanding have the same rights to file lawsuits, be sued, and face prosecution for the same kinds of crimes, regardless of their colour, religion, income, social standing, or political power. In the case of *Maneka Gandhi v. Union of India*²³ the court held that Article 14 strikes at the arbitrariness in state actions and ensures equality of treatment. It also laid down that the article forbids class legislation but does not forbid reasonable classification for the purpose of legislation.

Similarly, the other part of the section talks about "equal protection of law" which implies that all persons in similar circumstances shall be given the same rights and liabilities. As there should be no distinctions made between individuals and that the law should be administered equally to all situations.²⁴

In lieu of the interpretation of this section, it draws our attention to the fact that legalizing same-sex marriage would be in line with this provision, as it would grant equal rights and protections to all citizens, regardless of their sexual orientation. As if an individual is not protected is not protected with respect to their sexual orientation then it becomes violative of the first part of

²² Janice E. Thomson, *State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research*, 39 *International Studies Quarterly* 213, (1995), <https://doi.org> (last visited Oct. 17, 2023).

²³ *Maneka Gandhi vs Union of India*, Supreme Court, Jan. 25, 1978, Supreme Court Report, <https://main.sci.gov.in/judgment/judis/5154.pdf> (last visited Oct. 17, 2023).

²⁴ J.K. Mittal, *Right to Equality and the Indian Supreme Court*, 14 *The American Journal of Comparative Law* 422, <https://doi.org/10.2307/838451> (last visited Oct. 18, 2023).

the section and when the state does not recognise the rights then it also becomes violative of the second part.

In the landmark judgment of Shayra Bano²⁵ as well the Supreme Court did rule out that equality of status is also a manifestation of the fundamental right protected under A.14. This articulates to the fact that even the LGBTQIA+ community have the same status as the other members of the society get and their status shall not be affected with respect to their sexual orientation.

It has to be noted that equality cannot be granted only by giving equal opportunities or protection but also empowering with equality in civil and social rights, wherein legalization of same-sex marriage is one such social right. The horizon for the same is even wider. This right is also inclusive of the fact that every individual irrespective of their gender and sexual orientation has also the equal opportunity to make a choice with respect to their partners. In the NALSA²⁶ judgment the court identified and gave recognition to the fact that A.14 is a right to be enjoyed by any person and applies equally to men ,women and transgenders. Transgenders are equally entitled to legal protection of the law in all spheres including employment, education, healthcare and civil rights.

Hereafter, it can be analysed that every individual in the society has a right to choose their partner and still they shall be treated equally before the law. It is now the duty of the state to ensure that such equality is ensured by recognising and providing legal recognition to the same-sex marriage.

II. A.19(1)(a) FREEDOM OF SPEECH AND EXPRESSION:

This article of the Indian Constitution reflects the philosophy of securing the fact that every citizen should have the liberty of thought and expression. This right can be considered of utmost importance as this is one of the basic elements of a healthy, open-minded and flourishing democracy.²⁷

²⁵ Shayara Bano vs Union Of India And Ors., Supreme Court, Aug. 22, 2017, Writ Petition (C) No. 118 of 2016, Supreme Court Cases, <https://www.scobserver.in/cases/shayara-bano-union-india-triple-talaq-case-background/>(last visited Oct. 18, 2023).

²⁶ Supra Note 13

²⁷ Patna Law College, https://www.patnalawcollege.ac.in/notice/88274-e_content-_art_19.pdf(last visited Oct. 16, 2023).

In the case of Emmanuel v. State of Kerala²⁸ the court interpreted that all citizens do have a right to freedom of speech and expression which can be subject to reasonable restriction with respect to the state integrity, public order, decency, morality etc as the restriction must be based on a law with statutory force.

However, legalization of same-sex marriages does not go against the principles of public order or morality but the contrary to it does violate this article as under the freedom of speech and expression an individual is also entitled to the right to express themselves and absence of recognition does bar citizens to freely express their choices and sexual orientation.

As in the landmark judgment of Navtej Singh Johar²⁹ the court did lay emphasis on the fact and gave its verdict on the analysis that S.377 of the IPC had a chilling effect on the right to freedom of speech and expression as it denied the right to express one's sexual identity through speech and choice of romantic/sexual partner. Lastly, legalizing same-sex marriage could be seen as an expression of one's identity and choice of partner, and thus protected under this provision.

III. A.21 PROTECTION OF LIFE AND PERSONAL LIBERTY:

This article is considered to be the heart of the Indian Constitution, one of the most organic and progressive provisions of the living document. This section of the constitution has been drafted in a manner that it doesn't make any provision compulsory nor makes any individual exempted or free from their fundamental duties.³⁰ This article is inclusive of rights such as right to livelihood, privacy, shelter, reputation etc. such interpretation of this section has been drawn from the judicial precedents from the judgments of cases like Olga Tellis³¹, Subramanian Swamy Judgment³² etc.

²⁸ Emmanuel vs State of Kerala, Supreme Court, Aug. 11, 1986, Supreme Court Cases, <https://main.sci.gov.in/judgment/judis/8973.pdf>(last visited Oct. 18, 2023).

²⁹ Supra note 14

³⁰ Article 21: Protection of life and personal liberty - Constitution of India, Constitution of India, <https://www.constitutionofindia.net/articles/article-21-protection-of-life-and-personal-liberty/>(last visited Oct. 18 2023).

³¹ Olga Tellis & Ors vs Bombay Municipal Corporation, Supreme Court, July 10, 1985, Supreme Court Cases, <https://main.sci.gov.in/jonew/judis/9246.pdf>(last visited Oct. 19, 2023).

³² Subramanian Swamy v Union of India, Supreme Court, May 13, 2016, WP (C) 184/2014, <https://www.scobserver.in/cases/subramanian-swamy-union-of-india-defamation-as-a-criminal-offence-case-background/>(last visited Oct. 18, 2023).

Marriage is a personal matter and involves privacy as well as the right to dignity. Such components are also essential while making a decision for marriage irrespective of the gender or sexual orientation of the person involved. In the landmark judgment of Puttaswamy³³ the court reaffirmed the right to privacy as a fundamental right under the Constitution of India. The Court held that the right to privacy was integral to freedoms guaranteed across fundamental rights, and was an intrinsic aspect of dignity, autonomy and liberty.

In addition, while delivering its judgment in the NALSA³⁴ case the court made its reference to this article and affirmed to the fact that this article provides the Right To Dignity which includes diversity and self-expression, which allows transgender people to lead a dignified life.

Henceforth, the interpretation of Article 21 as laid by the courts in different cases also includes the right to privacy and autonomy over one's own life choices which brings us to the fact that legalizing same-sex marriage would be in consistence with an individual's right to choose their life partner.

IV. A.15 PROHIBITION OF DISCRIMINATION:

This article of the constitution deals with the prohibition of any discrimination on the grounds of caste, religion, gender, race or place of birth of citizens of India. A discrimination occurs when an individual is treated in a less favourable manner than another person in similar circumstances. In my opinion recognizing same-sex marriage would be a step towards eliminating discrimination based on sexual orientation as prohibition against discrimination on the basis of gender is also inclusive of the such prohibition with regard to the sexual orientation and the choice of partner made by an individual.³⁵

Thereby, referring to the constitutional provisions mentioned above a fact that can be established is that the constitution framers have been careful with their words and language used while drafting the same as despite of the fact that our constitution is nearly 75 years old but still is relevant and such progressive interpretations could be derived from the same.

³³ Justice K.S.Puttaswamy(Retd) vs Union Of India, Supreme Court, Sept. 26, 2018, WRIT PETITION (CIVIL) NO. 494 OF 2012, <https://www.scobserver.in/cases/puttaswamy-v-union-of-india-fundamental-right-to-privacy-case-background/>(last visited Oct. 19, 2023).

³⁴ Supra note 13

³⁵ Indian Institute of Legal Studies - Best Law College in India, https://www.iilsindia.com/study-material/160236_1619289063.pdf(last visited Oct. 19, 2023).

CONCLUSION

The issue of sanctioning same-sex marriage in India conveys significant humanistic ramifications. It is clear that India, with its different social and strict scene, is amidst a complex cultural change. The social difficulties encompassing the acknowledgment of same-sex marriage, like profoundly instilled social convictions, social shame, and familial tensions, are huge obstructions to advance. Be that as it may, there are indications of progress and expanding acknowledgment, particularly among more younger generations and metropolitan regions. Humanistic changes in mentalities and discernments have been worked with by more prominent admittance to data, schooling, and worldwide impacts. Perceiving the strength of the LGBTQ+ people group in India and their obligation to battling discrimination is fundamental. Legitimizing same-sex marriage can additionally speed up these positive humanistic changes by testing generalizations, advancing consideration, and normalizing LGBTQ+ connections.

From a global perspective, India remains at a junction in its way to deal with same-sex marriage. Numerous nations across the world have perceived marriage equity, laying out a worldwide standard for the insurance of LGBTQ+ freedoms. The worldwide local area perceives same-sex marriage as a crucial basic freedom, predictable with global common liberties guidelines. India's position on this issue influences its worldwide standing and connections. As the worldwide scene develops, the lawful acknowledgment of same-sex marriage lines up with the upsides of numerous countries and global associations, adding to India's political and common liberties commitments. Drawing from worldwide references can furnish India with important experiences and procedures as it explores the intricacies of marriage uniformity, mirroring the nation's place in a globalized world.

From an established viewpoint, India's legitimate structure is established on standards of balance, freedom, and equity. The Indian Constitution, with its emphasis on basic freedoms, especially Articles 14, 15, and 21, gives areas of strength for a person to perceiving the privileges of LGBTQ+ people. The Navtej Singh Johar Judgment of 2018, which decriminalized consensual same-sex relations, was a milestone choice insisting on individual privileges. Legitimizing same-sex marriage lines up with the soul of the Indian Constitution and its obligation to guaranteeing equivalent insurance under the law for all residents. It is a sacred basis to address the leftover obstructions and stretch out marriage privileges to same-

sex couples. After some time, it is normal that the Indian general set of laws will advance to mirror the protected upsides of equity and non-separation.

In conclusion, the legitimization of same-sex marriage in India addresses a multi-faceted test with humanistic, worldwide, and sacred aspects. While cultural opposition and social standards present huge impediments, India can draw motivation from worldwide points of reference and the advancing worldwide scene. According to a sacred viewpoint, perceiving marriage correspondence lines up with the standards of uniformity and basic freedoms revered in the Indian Constitution. The way to sanctioning will require a blend of legitimate change, social acknowledgment, and support endeavours. Eventually, embracing same-sex marriage in India is an impression of its obligation to the upsides of correspondence and non-segregation, in accordance with its constitution and global basic liberties guidelines.