
LEGAL STATUS OF SAME-SEX MARRIAGE IN INDIA: A COMPARATIVE ANALYSIS WITH GLOBAL PERSPECTIVES

Kajal, Assistant Professor in Law, CT Group of Institutions, Shahpur Jalandhar, Punjab
(India)

ABSTRACT

Same-sex marriage is a global issue that spans legal, cultural, and social dimensions, with varying acceptance across countries. While many nations have legalized same-sex marriage, India has yet to do so, despite significant advancements in LGBTQ+ rights, particularly the decriminalization of homosexuality in 2018. This article explores the current status of same-sex marriage in India, compares it with countries that have achieved marriage equality, and examines the broader global movement for LGBTQ+ rights. The history of same-sex marriage in India is shaped by colonial-era laws and societal stigmas. Section 377 of the Indian Penal Code, which criminalized homosexual acts, was introduced by the British in 1860, perpetuating discrimination against LGBTQ+ individuals. The issue of same-sex marriage gained prominence in the 21st century, with pivotal legal rulings marking key moments in LGBTQ+ activism. In 2018, the Supreme Court decriminalized homosexuality, but the question of same-sex marriage remained unresolved. India's existing marriage laws, including the Special Marriage Act of 1954, do not recognize same-sex unions, and efforts to legalize same-sex marriage have faced strong governmental opposition. In contrast, many countries around the world have made significant strides toward marriage equality. In 2015, the U.S. Supreme Court legalized same-sex marriage nationwide, followed by nations such as the United Kingdom, Canada, and the Netherlands. Despite this global progress, some countries continue to resist due to cultural and religious objections. This article expresses the view that while India has made progress in LGBTQ+ rights, the issue of same-sex marriage remains contentious. The global movement toward marriage equality offers hope that India will eventually recognize same-sex marriage, aligning with international trends and advancing LGBTQ+ rights in the country.

Keywords: Same Sex Marriages, LGBTQ rights, Legalise, Global Perspective, Special Marriage laws, India

INTRODUCTION

Same-sex marriage is a topic that has stirred debates globally, with significant legal, cultural, and social implications. In many parts of the world, this issue is a matter of human rights, equality, and freedom. While several countries have legalized same-sex marriage, many others continue to resist or maintain a conservative stance, citing cultural, religious, and traditional reasons.

India, a country with a rich history of cultural diversity and complexity, has seen its own share of debates surrounding the legalization of same-sex marriage. Despite recent progress in terms of decriminalizing homosexuality, as seen in the landmark 2018 Supreme Court ruling, the legal recognition of same-sex marriage remains a contentious and unresolved issue in the country. This article will explore the current status of same-sex marriage in India, analyze relevant laws, and provide a comparative analysis of the situation in other countries where same-sex marriage has been legalized.

HISTORICAL OVERVIEW OF SAME-SEX MARRIAGE IN INDIA

The history of same-sex marriage in India has been marked by cultural, legal, and societal shifts. Here's a concise historical overview¹:

1. Ancient and Medieval Periods:

In ancient India, texts like the “*Kama Sutra*” acknowledged various forms of sexual expression, including same-sex relationships. There are historical references to same-sex relationships, though not necessarily framed as “marriage” in the modern sense. Ancient Indian culture was more flexible with gender and sexuality than what would later emerge under colonial rule.

2. British Colonial Era and Section 377 (1860):

The introduction of **Section 377** of the *Indian Penal Code* by the British in 1860 criminalized “carnal intercourse against the order of nature,” which was used to target same-sex

¹ Ray S, “Indian Culture Does Recognise Homosexuality, Let Us Count the Ways” The Quint : available at: <<https://www.thequint.com/voices/opinion/homosexuality-rss-ancient-indian-culture-section-377>>; last visited on 20 March 2025.

relationships. The law persisted for more than a century, making homosexual acts illegal and reinforcing social stigmas against same-sex relationships.

3. Post-Independence India:

After India gained independence in 1947, *Section 377* continued to be in force, criminalizing same-sex acts. Despite this, there were no significant legal or political movements for same-sex marriage, and homosexuality remained a taboo subject in public discourse.

4. The 21st Century - Beginnings of Change:

In the early 2000s, LGBTQ+ advocacy gained momentum. In 2001, the “Naz Foundation²” filed a petition challenging Section 377, arguing that it was unconstitutional. This was a significant moment in India's journey toward LGBTQ+ rights.

5. 2009 - Delhi High Court's Landmark Judgment:

In 2009, the Delhi High Court decriminalized consensual same-sex acts, arguing that Section 377 violated the fundamental rights of LGBTQ+ individuals. While this was a significant victory, the ruling did not address the issue of same-sex marriage.

6. Supreme Court's Decision:

In 2013, the Supreme Court of India overturned the Delhi High Court's judgment, reinstating Section 377 and criminalizing same-sex acts once again. This decision was widely criticized, but it led to renewed activism. In 2018, the Supreme Court of India finally decriminalized consensual same-sex relations between adults. This was a monumental decision, as it removed the legal basis for prosecuting same-sex couples. However, the ruling did not extend to recognizing same-sex marriages, leaving that issue unaddressed.

7. Recent Developments and Legal Challenges:

In 2022, a petition seeking the legalization of same-sex marriage was brought before the Indian Supreme Court. The petition sought recognition for same-sex marriages under Indian law, but the court has yet to deliver a ruling. While the Indian government has not yet legalized same-

² 160 Delhi Law Times 277. (India)

sex marriage, societal attitudes are shifting, with increasing support for LGBTQ+ rights, particularly among younger generations. As of now, same-sex marriage is not legally recognized in India. However, LGBTQ+ advocacy continues, and there is ongoing legal and social discourse about the issue. Public opinion is gradually evolving, with growing support for marriage equality.

LEGAL LANDSCAPE OF SAME-SEX MARRIAGE IN INDIA

1. Decriminalization of Homosexuality: A Milestone Achievement

India's journey toward the decriminalization of homosexuality began in earnest with the case of *Navtej Singh Johar v. Union of India* (2018)³, where the Supreme Court struck down Section 377 of the Indian Penal Code (IPC). This section, which had criminalized "unnatural offenses" and was often interpreted to include homosexual acts, was declared unconstitutional by the Court. The ruling was a significant step forward for the LGBTQ+ community in India, as it decriminalized same-sex relationships between consenting adults.

However, while the 2018 judgment was hailed as a victory for LGBTQ+ rights, it did not directly address the issue of same-sex marriage. The legal framework surrounding marriage in India is primarily based on religious and customary laws, with the Special Marriage Act, 1954, providing a secular avenue for individuals of different faiths to marry. The Act, however, does not recognize same-sex marriages, leaving LGBTQ+ couples without legal recognition or protection.

2. The Push for Same-Sex Marriage Legalization

In the wake of the decriminalization ruling, LGBTQ+ advocates in India began pushing for the legalization of same-sex marriage. The petitioners in the case of *Navtej Singh Johar* and subsequent petitions have called for the recognition of same-sex unions under the Special Marriage Act. They argue that the Constitution of India, with its guarantees of equality, non-discrimination, and the right to life and personal liberty under Articles 14, 15, and 21, should extend to same-sex couples as well.

³ AIR 2018 SC 4321. Available at: <https://indiankanoon.org/doc/168671544/>; last visited on: 20 March 2025.

Despite these calls, the Indian government has remained largely resistant to legalizing same-sex marriage. In 2020, the Ministry of Law and Justice opposed a petition filed by a same-sex couple seeking to register their marriage under the Special Marriage Act. The government's stance is grounded in the argument that marriage, in the Indian context, is inherently a union between a man and a woman, with procreation as one of its primary purposes. Moreover, critics argue that the Indian society is not yet ready to accept such a drastic change, given the country's deeply ingrained cultural and religious values.

3. The Role of Courts in Shaping LGBTQ+ Rights

Indian courts, particularly the Supreme Court, have played a critical role in advancing LGBTQ+ rights. In addition to the 2018 *Navtej Singh Johar* case, the Indian judiciary has been instrumental in recognizing the rights of transgender individuals through the *National Legal Services Authority v. Union of India* (2014)⁴ case, which granted legal recognition to the transgender community and affirmed their right to self-identify. However, the issue of same-sex marriage has not yet been definitively addressed by the judiciary, leaving it largely to the legislature and executive to take further steps. In 2023, the Supreme Court of India began hearing petitions that sought the legalization of same-sex marriage. These hearings are seen as a critical moment for the future of LGBTQ+ rights in India, and the outcome could either pave the way for legalization or further delay the recognition of same-sex marriages.

COMPARATIVE ANALYSIS: SAME-SEX MARRIAGE LEGALIZATION AROUND THE WORLD

The legal status of same-sex marriage varies dramatically across the world. Some countries have taken bold steps in recognizing the rights of same-sex couples, while others remain firmly opposed. Below, we will compare the status of same-sex marriage in India with several key countries that have legalized same-sex marriage⁵:

1. The United States: In the United States, the legal status of same-sex marriage changed

⁴ 2014 INSC 275, available at: https://digiscr.sci.gov.in/view_judgment?id=NzMyMA==, last visited on: 17 March 2025.

⁵ Gay Marriage Around the World: available at: <https://www.pewresearch.org/religion/2017/08/08/gay-marriage-around-the-world-2013/>, last visited on: 17 March 2025

dramatically with the 2015 Supreme Court ruling in *Obergefell v. Hodges*⁶. The Court ruled that the Constitution guarantees the right to marry for same-sex couples, striking down state-level bans on same-sex marriage. This ruling was a monumental victory for the LGBTQ+ community, as it extended marriage equality nationwide. The decision was grounded in principles of equal protection and due process under the 14th Amendment, ensuring that same-sex couples have the same legal rights and protections as heterosexual couples.

2. The United Kingdom: The United Kingdom legalized same-sex marriage in 2014 with the passage of the *Marriage (Same Sex Couples) Act*⁷. The law applies to England and Wales, while Scotland legalized same-sex marriage a year earlier. Northern Ireland, however, only legalized same-sex marriage in 2020 after a prolonged political struggle. The UK's decision to legalize same-sex marriage came after years of incremental progress, including the decriminalization of homosexuality in 1967 and the introduction of civil partnerships for same-sex couples in 2005.

3. Canada: Canada became the fourth country in the world to legalize same-sex marriage in 2005, following a series of court rulings and legislative measures. The *Civil Marriage Act* legalized same-sex marriage across the country, affirming the principle of equality under the Canadian Charter of Rights and Freedoms. Canada's early recognition of same-sex marriage was seen as a significant step forward for LGBTQ+ rights, and it has since become one of the most progressive countries in terms of LGBTQ+ equality.

4. The Netherlands: The Netherlands made history in 2001 as the first country in the world to legalize same-sex marriage. The country has long been known for its progressive stance on LGBTQ+ issues, and the legalization of same-sex marriage was seen as a reflection of its commitment to human rights and equality. Since then, many other European countries, including Spain, Belgium, and Germany, have followed suit, legalizing same-sex marriage and ensuring that LGBTQ+ couples have the same legal rights as heterosexual couples.

5. Latin America: In Latin America, the trend toward legalizing same-sex marriage has gained significant momentum in recent years. Argentina was the first country in the region to legalize

⁶ 576 U.S. 644 (2015), available at: <https://supreme.justia.com/cases/federal/us/576/644/>, last visited on: 17 March 2025.

⁷ Marriage (Same Sex Couples) Act 2013: <https://www.legislation.gov.uk/ukpga/2013/30/notes/division/1/1#:~:text=Its%20main%20purpose%20is%20to,being%20solemnized%20through%20a%20religious>, last visited on: 18 March 2025.

same-sex marriage in 2010. Other countries⁸ in Latin America, including Brazil, Colombia, Uruguay, and Ecuador, have followed suit, recognizing the right of same-sex couples to marry. However, several countries in the region, such as Mexico, continue to have a patchwork of laws, with some states recognizing same-sex marriage while others do not.

6. Asia: In Asia, the situation is more complex. While some countries have made progress, others remain firmly opposed to same-sex marriage. In Taiwan, same-sex marriage was legalized in 2019, making it the first Asian country to recognize the right of same-sex couples to marry. On the other hand, countries like Japan, South Korea, and China have yet to legalize same-sex marriage, although there is growing public support for LGBTQ+ rights in some of these countries. In India, as discussed, the legal recognition of same-sex marriage remains a contentious issue. While the decriminalization of homosexuality was a significant milestone, the country lags behind many other nations in recognizing marriage equality.

THE GLOBAL MOVEMENT FOR SAME-SEX MARRIAGE AND HUMAN RIGHTS

The global movement for same-sex marriage is part of a broader struggle for LGBTQ+ rights, which includes the right to love, the right to be free from discrimination, and the right to live without fear of persecution. The legalization of same-sex marriage is a critical part of this struggle, as it ensures that LGBTQ+ individuals and couples are afforded the same legal protections and rights as their heterosexual counterparts. The global trend toward marriage equality is a reflection of changing societal attitudes toward LGBTQ+ people. While some countries have embraced the idea of same-sex marriage, others continue to resist, citing cultural and religious reasons. The challenge in India, and in many other parts of the world, lies in shifting public perceptions and overcoming deeply ingrained prejudices.

ARGUMENTS IN FAVOR OF SAME-SEX MARRIAGE IN INDIA⁹

- 1. Human Rights and Equality:** One of the most compelling arguments for the legalization of same-sex marriage is that it aligns with fundamental human rights. The Constitution of India guarantees equality before the law (Article 14), protection from

⁸ Gay Marriage Around the World: available at: <https://www.pewresearch.org/religion/2017/08/08/gay-marriage-around-the-world-2013/>, last visited on: 17 March 2025

⁹ Same Sex Marriage in India- available at: <https://timesofindia.indiatimes.com/readersblog/dopamineffable/same-sex-marriages-in-india-a-complete-overview-53507/>, last visited on 20 March 2025.

discrimination (Article 15), and the right to life and personal liberty (Article 21). Denying same-sex couples the right to marry is a violation of these constitutional principles, as it creates an unequal situation where individuals in same-sex relationships are denied the same legal rights and privileges afforded to heterosexual couples.

2. **Non-Discrimination and Social Justice:** Legalizing same-sex marriage would be a significant step toward promoting social justice and eradicating discrimination. Just as the decriminalization of homosexuality in 2018 was a victory for LGBTQ+ rights, legalizing marriage equality would be a further acknowledgment of the rights of LGBTQ+ individuals to live with dignity and without fear of marginalization. It would help dismantle the social stigma surrounding same-sex relationships and contribute to building a more inclusive society.
3. **Legal and Financial Protections:** Marriage confers a host of legal, social, and financial benefits, including inheritance rights, tax benefits, medical decision-making rights, access to spousal insurance, and more. Same-sex couples currently do not have access to these benefits, which can create a significant disparity, particularly in cases of death, illness, or financial hardship. Legalizing same-sex marriage would ensure that LGBTQ+ couples have equal access to these protections.
4. **Mental Health and Well-Being:** The recognition of same-sex marriage would significantly contribute to the mental and emotional well-being of LGBTQ+ individuals. The societal validation of same-sex relationships can have a profound positive impact, reducing the sense of alienation, stigma, and discrimination. It would also help reduce the rates of mental health issues, such as depression and anxiety, that are often higher in the LGBTQ+ community due to societal rejection and lack of legal recognition.
5. **International Progress and Global Standards:** Many countries around the world have already legalized same-sex marriage, setting a global standard for equal rights and inclusivity. Nations like the United States, Canada, the United Kingdom, and the Netherlands have recognized that love and marriage should not be restricted by gender. India's refusal to legalize same-sex marriage places it in a regressive position when compared to global human rights norms. Legalizing same-sex marriage would allow

India to align itself with progressive, democratic countries that value equality.

6. **Changing Social Attitudes and Support:** Public opinion in India has evolved significantly over the years. In 2021, a study conducted by the Pew Research Center found that a majority of Indian citizens, particularly younger generations, support equal rights for LGBTQ+ people. The increasing acceptance of same-sex relationships, coupled with the success of LGBTQ+ movements in the country, suggests that the public is ready for the recognition of same-sex marriages. Legalizing same-sex marriage would reflect this shift and further normalize LGBTQ+ relationships in mainstream society.
7. **LGBTQ+ Families and Parenting Rights:** Legalizing same-sex marriage would also grant LGBTQ+ couples the right to adopt children, which is not currently available to them in India. Adoption laws are based on the premise of a heterosexual family structure, often excluding same-sex couples from being considered as suitable adoptive parents. Marriage equality would provide same-sex couples the legal framework necessary to become adoptive parents, thus allowing LGBTQ+ families to form and live with legal recognition.

ARGUMENTS AGAINST SAME-SEX MARRIAGE IN INDIA

1. **Cultural and Religious Beliefs:** One of the most prominent arguments against same-sex marriage in India is rooted in cultural and religious values. Traditional Hindu, Muslim, and other religious communities in India tend to hold conservative views regarding marriage, which is traditionally defined as a union between a man and a woman for procreation. Many argue that same-sex marriage goes against the moral fabric of Indian society and clashes with the country's deep-rooted cultural and religious norms.
2. **Historical and Societal Norms:** Critics of same-sex marriage argue that marriage, as an institution, has historically been a union designed for heterosexual couples. In India, marriage is deeply intertwined with social expectations, family structures, and procreation. Critics argue that the Indian concept of marriage is built on the foundation of creating families, raising children, and preserving societal continuity. Legalizing same-sex marriage could, in their view, undermine this traditional understanding and

destabilize established social norms.

3. **Concerns over the Institution of Marriage:** Some opponents argue that the institution of marriage itself is being diluted by redefining it to include same-sex couples. They believe that marriage has long served a specific societal function, especially in terms of maintaining the family unit and raising children. Legalizing same-sex marriage, they argue, could lead to further changes to the institution of marriage, including the potential for legalizing other non-traditional unions (e.g., polygamy, polyandry).
4. **Population and Procreation:** A common argument against same-sex marriage in India is the perceived threat to population growth. Marriage, in the traditional sense, is often viewed as an institution primarily designed to encourage procreation. Critics argue that legalizing same-sex marriage could result in fewer children being born, which they perceive as a threat to the country's population growth. However, this view fails to recognize that marriage is about more than procreation—it is also about companionship, love, and mutual support.
5. **Lack of Readiness in Society:** Some argue that India is not yet ready to accept same-sex marriage due to the deeply entrenched social stigma surrounding LGBTQ+ relationships. Despite some progress in recent years, a large segment of the population continues to harbor negative attitudes toward the LGBTQ+ community. The pace of social change in India is slower than in many Western countries, and opponents argue that legalizing same-sex marriage could result in further polarization and social unrest.
6. **Legal and Constitutional Complexity:** There are concerns about the legal complexity of recognizing same-sex marriages in India. India's legal framework, particularly in terms of marriage, is based on personal laws that are often tied to religious practices. The Special Marriage Act, 1954, which allows interfaith marriages, has been cited as a potential tool for extending marriage equality to same-sex couples. However, critics argue that this would require significant amendments to India's existing laws, which could create legal uncertainties and complications.
7. **Political Backlash:** Politicians, especially those from conservative or religious backgrounds, have often expressed strong opposition to the legalization of same-sex marriage. There is concern that endorsing same-sex marriage would lead to backlash

from voters who hold conservative views on marriage and family. Political parties may fear alienating their core constituents by supporting such a radical change in the law.

CONCLUSION

The debate over same-sex marriage in India is multifaceted, touching on human rights, social justice, cultural values, and legal traditions. While the 2018 decriminalization of homosexuality marked a significant step forward for LGBTQ+ rights, the legalization of same-sex marriage remains a contentious issue. Arguments for legalization emphasize equality, non-discrimination, legal protections, and the well-being of LGBTQ+ individuals, while opponents cite societal readiness, religious beliefs, and concerns about the sanctity of marriage. Ultimately, the legalization of same-sex marriage will require both legal and cultural shifts. India lags behind countries like the United States, Canada, and the Netherlands in recognizing marriage equality, but growing public support for LGBTQ+ rights offers hope for future change. In the coming years, the judiciary and legislature will play key roles in shaping the future of same-sex marriage in India. Advocates will continue to push for a future where all couples, regardless of sexual orientation, are granted equal recognition and rights under the law.