

Overview of same sex marriage

An analytical study by Resolve Legal

Why this Study?

In light of the growing recognition of fundamental rights, particularly the right to privacy and individual autonomy, there is a need to address the recognition of new rights for individuals. However, diverse perspectives exist within society, with some considering same-sex relationship taboo and avoiding discussions on the topic. Yet, there are individuals who feel suffocated by societal norms and are willing to risk their lives to embrace their true identities, as exemplified in many incidents.

The recent incident of a suicide of a lesbian couple who jumped into a river and drowned highlights the hidden struggles of gay women in India. As reported in Reuters a couple who committed suicide rather than accepting the heterosexual relationship¹, explicitly shows what mental agony they go through when forced to accept the sexual attraction/orientation. Fast forward to 2023, a petition titled Supriyo a.k.a Supriya Chakraborty & Abhay Dang v. Union of India² was filed, seeking the recognition of same-sex marriage. For Resolve Legal, as professionals in the legal field, it is both convenient and a social responsibility to explore different areas of society and conduct research & studies. In order to conduct a comprehensive study on the issue of same sex marriage, a committee was formed comprising Ms. Jyotika Kalra, former member of NHRC and an AOR Supreme Court of India, who worked extensively on gender related issues including LGBTQI+, and supervised numerous research projects during her tenure in NHRC. The committee also included Prof. (Dr.) Ritu Gupta, Research Director of Center for Business and Financial Laws at NLU Delhi, Dr. Kush Kalra, an Author of more than 21 books and an activist who has many PILs to his credit, Adv. Hemant Kumar Yadav, Adv. Ayushi Chugh, Adv Annwesha Deb and Adv. Aditya Jha, who provided their mentorship and coordination.

This study went through four main sections: **Part-I-** Exploration of religious and cultural perspectives on same-sex marriage, particularly within Hinduism, Islam, and Christianity; **Part-II-** Examination of countries where same-sex marriage is legally recognized and where it is not, including relevant laws and court rulings; **Part-III-** Contemporary developments, including news and opinions from prominent figures, to gain insights into the current discourse on same-sex marriage; **Part-IV-** Relevant Indian and Foreign Judgements. To carry out this study, this crucial task was assigned to 3 teams of law interns who had joined us during the summer vacations. These teams included Mr. Abhishek, Ms. Peehu Bharadwaj, Ms.

¹ Lesbian couple's suicide notes reveal stigma they face in India | Reuters

² W.P.(C) No. 001011/ 2022

Shriya Ramesh, Ms. Garima Verma, Mr. Vikram Kumar, Ms. Ritu Dhingra, Mr. Yashasvee, and Mr. Karan Thobani.

The teams engaged in daily meetings among themselves and exchanged ideas. We also conducted 1 physical and 5 online meetings with all the team members. It is important to note that this study was not conducted in an academic manner and does not provide a unique or novel perspective, but rather aims to facilitate society's understanding of same-sex relationships. It includes 3 Foreign Judgements, 6 Indian judgements, relevant legislatures, 7 number of Countries, 3 most influential religions as per the population. Considering the size of our organisation and limited access to the resources to the interns, we have gathered data from various sources including books, scriptures, news articles, and wikipedia.

The objective of this study is to provide a comprehensive overview of same-sex relationships and their legal and cultural implications. It is intended to be valuable for lawmakers, policymakers, executives, civil society, and students of gender studies and related disciplines. The study also includes recommendations. Feedback and suggestions regarding the content of the study can be sent to Resolvelegaladvocates@gmail.com.

Aditya Jha
Coordinator

INTRODUCTION

The Indian Society had long adhered to a binary system of society, recognizing only male and female as gender and implying only heterosexual relationships. However, certain groups within this society, such as, transmen, transwomen, kinnars and hijras, who do not identify themselves as strictly male or female may have an inclination towards homosexual/ same sex relationship. Not only was there no recognition of transgender as a third gender but there existed widespread discrimination against these persons. Society has been very baneful about the transgenders and consequently they have been facing hostility for a long time. In response to their plight, a petition was filed before the Supreme Court by NALSA³ in the year 2012, raising the issue of transgenders and legal recognition and protection of the rights of the transgenders. On April 15, 2014, judgement in this matter was passed which not only recognised transgender people as third gender but also affirmed their fundamental rights under the Indian constitution. The Court directed the govt, to take steps to provide them with affirmative action outlining measures to improve the lives and daily routines of transgender individuals.

Concurrently, there were other significant developments aimed at recognizing and granting legal rights to transgender individuals, including the Transgender Persons (protection of rights) Act of 2019. This act safeguards the rights, well-being, and various concerns pertaining to transgender individuals.

In a landmark judgement on August 24, 2017, a nine-judge bench of the Supreme Court in Justice K.S.Puttaswamy (Retd) v. Union of India and Ors⁴ unanimously held that Privacy was not “an elitist construct”. Privacy to be a distinct and independent fundamental right under Article 21 of the Indian Constitution

In 2018, a Constitutional Bench of the Supreme Court in Navtej Singh Johar⁵ judgement decriminalized consensual sexual acts between adults in private. Fast forward to 2023, a petition titled Supriyo a.k.a Supriya Chakraborty & Abhay Dang v. Union of India⁶ was filed, seeking the recognition of same-sex marriage. The case is currently pending before the Supreme Court, and it has reopened discussions on the intersection of religion and homosexuality in the context of marriage. The Indian government has taken a stance against legalizing same-sex marriage in the Supreme Court, citing traditional values and cultural norms as reasons for not recognizing it.

Considering these developments, we as a law firm took the responsibility of conducting this study as already explained in “Why this study”. The purpose of this study is not to add any biases leading towards any judgement but to understand the topic through available facts and

³ (2014) 5 Supreme Court Cases 438

⁴ 2019) 1 SCC 1

⁵ (2018) 10 SCC 1

⁶ W.P.(C) No. 001011/ 2022

law. It aims to analyse social behaviour, identify underlying causes, that contribute to the evolution of same sex relationship/ marriage. The analytical study seeks to identify recurring social patterns and gather information about the development in the society, ultimately fostering knowledge and informing future courses of action.

Part I

Exploration of religious and cultural perspectives on same-sex marriage

The discussion surrounding same-sex relationship and marriage is multifaceted, in this part, we will explore the religious and cultural perspectives on same-sex relationship and marriage within the contexts of Hinduism, Christianity, and Islam. The religions mentioned before, represent significant global faith traditions and offer diverse viewpoints on this subject. Understanding their perspectives will shed light on the varying attitudes towards same-sex relationships and the ways in which religious beliefs influence societal norms and values.

HINDUISM

Hindu scriptures, such as Manu smriti and Dharma shastra, traditionally define marriage as a sacred union between a man and a woman. This concept is reiterated in verse 67 of Manu smriti:

*brāhmaṇasya rujaḥ kṛtvā ghrātiraghreyamadyayoḥ |
jaihmyaṃ ca maithunaṃ puṃsi jātibhramśakaraṃ smṛtam || 67 ||*

"Causing pain to a Brāhmaṇa (by a blow), — smelling at things that should not be smelt, or at wine, — cheating — and sexual intercourse between men, — all this is declared to lead to loss of caste (Gatibhramsa). — (67)" (Manu Smriti, Chapter 11, Verse 67)

Here in this verse, it is explicitly mentioned that sexual intercourse between men is societal sin which will lead to loss of his particular caste.

(Manu Smriti, Chapter 11, Verse 67)

It is worth noting that Manu smriti and other ancient texts mention eight types of marriages, but all of them are exclusively between a man and a woman. But even where same-sex relationships are mentioned, they are mentioned as an example of same-sex relationships and not as marriages.

The idea of eight types of marriages is further supported by the judgement of *Koppiseti Subbarao vs. the State of A.P.*⁷, where the Supreme Court recognized the existence of eight forms of marriage as practised by Aryan Hindus, in Para 16 of the Judgment it states that: -

⁷ (2009) 12 SCC 331

“Aryan Hindus recognised 8 forms of marriage, out of which four were approved, namely, Brahma, Daiva, Arsha and Prajapatya. The dis-approved forms of marriages were Gandharva, Asura, Rakshasa and Paisacha. In the Brahma form of marriage, some amounts had to be spent by father/guardian, as the case may be, to go ultimately to the spouses. The origin of dowry may be traced to this amount either in cash or kind”

On the other hand we can also take the example of the carvings at khajuraho temple depicting same sex relationships “In the temples of Khajuraho, there are images of women erotically embracing other women and men displaying their genitals to each other. Scholars have generally explained this as an acknowledgement that people engaged in homosexual acts.”⁸

Amara Das Wilhelm's book *"Tritiya-Prakriti: People of the Third Sex"*, Which proves that homosexuals and the "third gender" were not only in existence in Indian society back then, but that these identities were also widely accepted. Citing from the chapter "Purushayita" in the *Kama Sutra*⁹, a 2nd century ancient Indian Hindu text, the book mentions that lesbians were called "swarinis". The book further made mention of gay men or "*klibas*". They (gay men) were thoroughly referenced in the chapter "*Auparishtaka*" in the *Kama Sutra*.¹⁰

In summary, Hindu scriptures and their references, including Manu smriti, consistently emphasise that marriage is traditionally understood as a union between a man and a woman. While different types of marriages are recognized, they all adhere to this fundamental principle.

Marriage as an Institution in Hindu Society

Marriage held immense significance among Hindus, as it was regarded primarily as a sacrament rather than a mere source of pleasure. This sacredness of Hindu marriage can be attributed to several reasons:

1. Highest Aim of Dharma: Marriage was seen as a means to fulfil one's dharma, the moral and ethical duties in life.

⁸<https://www.indiatoday.in/india/story/10-instances-of-homosexuality-among-lgbts-in-ancient-india-1281446-2018-07-10>

⁹ Vatsayana Mallanaga

¹⁰<https://www.thequint.com/opinion/homosexuality-rss-ancient-indian-culture-section-377#read-more#read-more#read-more>

2. Performance of Religious Rites: The marriage ceremony involved various sacred rites such as havan (fire ritual), kanyadan (giving away the bride), and panigrahana (holding hands), which were based on sacred formulas.
3. Invocation of Sacred Entities: The rites were performed before Agni, the most revered deity, with recitation of mantras from the Vedas, the holiest scriptures. The presence of a Brahmin, the highest ordained person, further sanctified the union.
4. Indissoluble and Irrevocable bond: Hindu marriage was considered an unbreakable and lifelong commitment. The couple was bound to each other not only until death but even beyond.
5. Unique Significance for Women: While men participated in multiple sacraments throughout their lives, women experienced the sacredness of marriage as their singular sacrament, elevating its importance in their lives.
6. Emphasis on Chastity and Faithfulness: The virtue of a woman's chastity and the fidelity of a man were given utmost importance in Hindu marriage, reinforcing its sacred nature.
7. Social Duty and Obligation: Marriage was viewed as a societal duty, with the focus primarily on fulfilling responsibilities towards the family and the community, often superseding individual interests and aspirations.

These factors combined to establish marriage as a sacred institution within Hindu culture, embodying the principles of dharma, spirituality, and societal cohesion.

CHRISTIANITY

Christianity, similarly to Hinduism, maintains a consistent perspective on the nature of same-sex relationships. Within Christian teachings, there are numerous references that either label such relationships as sinful or describe them as prohibited. Christianity upholds the belief that sexual intimacy is intended to be shared exclusively but within the context of a monogamous marriage between a man and a woman. This viewpoint is rooted in various passages from the Bible, including the Old Testament and the New Testament.

1. In the Old Testament, passages such as Leviticus 18:22 and Leviticus 20:13 explicitly label same-sex relationships as an "abomination" and deserving of punishment. These verses emphasise the importance of adhering to the divine order of male-female relationship.
2. In the New Testament, passages such as Romans 1:26-27 and 1 Corinthians 6:9-10 also address same-sex relationships. They describe such relationships as going against God's design and list them among various other behaviours that are considered sinful.
3. Leviticus in the Bible states: *"If a man also lie with mankind as he laith with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them."* The destruction of the cities of 'Sodom' and 'Gomorrah' is seen as the source of criminalisation of sodomy in most common law countries influenced by the English rulers.

4. The Bible uses the word "sodomy" many times. One of the Bible verses used most often to condemn homosexuality is Genesis 19. Due to the widespread usage of this phrase, the term "Sodomite," which previously denoted a resident of Sodom, evolved into a legal term for illegal sex behaviour and is now a pejorative epithet for a homosexual. The name "Sodom" is a translation of the Hebrew word "S'dom," which means "burnt." When making decisions about homosexuality, the courts in the United Kingdom and the United States have frequently cited this episode.
5. It's noteworthy to notice that the Bible only admonishes homosexual behaviour six times while doing so 362 times for heterosexual behaviour. It's interesting to note that the original Hebrew, Aramaic, and Greek manuscripts do not contain the words "homosexual" or "homosexuality." They were first used in the late 19th century. Since same-sex committed partnerships were not well understood by biblical authors, these languages lacked terms to describe them.

Marriage as an Institution in Christian Society

Christians believe that marriage is a gift from God, one that should not be taken for granted. It is the right atmosphere to engage in sexual relations and to build a family life. Getting married in a church, in front of God, is very important.

A marriage is a public declaration of love and commitment. This declaration is made in front of friends and family in a church ceremony. The Bible offers a wide variety of marriage arrangements, many of which we no longer condone. It never condemns same-sex marriage, partly because it simply does not address the issue directly.

Jesus, when expressing his understanding of the scriptural foundation for the divine purpose and design in marriage, referred to its origins in the Creation account: *"From the beginning of creation, God made them male and female. For this cause a man shall leave his father and mother, and shall cleave to his wife, and the two shall become one flesh..."*¹¹

Throughout the history of Christianity, these teachings have been interpreted and upheld by different denominations, reinforcing the understanding that same-sex relationships are not in line with the moral principles and guidelines set forth by the faith.

Ultimately, the Christian perspective on same-sex relationship is rooted in the belief in the divine order and the teachings found within the scriptures, which shape the moral framework of the faith.

ISLAM

¹¹ English Standard Version Bible, 2001, (Genesis 2:24)

In Islam, the holy book Quran does not explicitly address homosexuality or prohibit it in specific verses. However, interpretations of certain hadiths (sayings and actions of the Prophet Muhammad) and other scriptural sources within Islamic teachings have commonly been understood to view same-sex relationship as prohibited.

1. Some scholars refer to passages that highlight the story of the people of Lot (Quran 7:80-84, 26:165-166), where the act of engaging in same-sex sexual behaviour is seen as sinful. These passages, along with interpretations of hadiths, have contributed to the understanding that Islam generally regards same-sex relationships as contrary to its teachings.
2. The Prophet states that: *"If a woman comes upon a woman, they are both adulteresses, if a man comes upon a man, then they are both adulterers."*¹²
3. As for those of your women who commit illegal intercourse—call four witnesses from among yourselves. If they testify, confine the offenders to their homes until they die or Allah ordains a 'different' way for them. And the two among you who commit this sin—discipline them. If they repent and mend their ways, relieve them. Surely Allah is ever Accepting of Repentance, most merciful.

The Verses are against same sex relationship but these verses can also be interpreted that even during those days same sex relationship was practised but Islam condemned by the verses.

Marriage as an Institution in Islam

Islamic scholars have traditionally interpreted these texts to emphasise the importance of heterosexual marriage and family units as the basis for procreation and societal stability. Consequently, same-sex relationships are often discouraged or prohibited within the framework of Islamic jurisprudence. It is important to note that interpretations of Islamic teachings on homosexuality can vary among different scholars and within different cultural contexts.

There are ongoing debates and discussions within the Muslim community regarding the understanding and application of these teachings in the modern world. Ultimately, the understanding of Islam's view on same-sex relationships is shaped by interpretations of religious texts and the diverse perspectives within the Muslim community.¹³

¹² Al-Tabarani in al-Mu'jam al-Awat: 4157, Al-Bayhaqi, Su'ab al-Iman: 5075

¹³https://en.wikipedia.org/wiki/Marriage_in_Islam#:~:text=Quran%2024%3A32%20asserts%20that,fulfillment%20of%20a%20base%20need

ANALYSIS

From the religious and cultural perspectives within Hinduism, Christianity, and Islam which represent significant global faith, it is evident that all three religions generally view same-sex relationships as either sinful, prohibited, or against the natural order. However, it is important to note that interpretations and beliefs within each religion can vary among different individuals and communities.

In Hinduism, the scriptures such as Manu smriti and Dharma shastra define marriage as a union between a man and a woman. While some references in ancient texts mention same-sex relationships, they are often described as separate from the institution of marriage. The existence of diverse sexual and gender identities is acknowledged in certain Hindu texts and traditions. However, we are unable to find any reference or recognition of marriage between same-sex couples.

Christianity, based on the Bible, also generally disapproves of same-sex relationships. Various passages in the Bible, particularly in the Old Testament, are often interpreted as condemning homosexual behaviour. However, it is important to note that the Bible primarily focuses on heterosexual relationship, and the issue of same-sex marriage is not directly addressed in the biblical texts. Interpretations of biblical passages vary among different Christian denominations.

Islam, based on the Quran and Hadiths (sayings and actions of the Prophet Muhammad), generally condemns homosexuality and same-sex relationship. While the Quran does not explicitly mention homosexuality, certain Hadiths and interpretations of Islamic scholars consider same-sex relationships as sinful. The story of Prophet Lut in the Quran is often cited to emphasise the disapproval of homosexuality within Islam. It is important to note that interpretations of Islamic teachings can vary among different sects and scholars, and there are diverse perspectives within the Muslim community regarding homosexuality and same-sex marriage.

In terms of marriage, all three religions primarily emphasize the union between a man and a woman. Marriage is considered a sacred institution in Hinduism, with an emphasis on dharma (duty) and religious ceremonies performed before Agni (the sacred fire) based on Vedic rituals. In Christianity, marriage is viewed as a gift from God and a declaration of love and commitment before Him. The Bible highlights the importance of heterosexual marriage, but it does not directly address same-sex marriage. In Islam, marriage is seen as a contract between a man and a woman, and it is regarded as a religious duty. It is to be noted that there is no mention or recognition of Same-sex marriage at all, within Islamic teachings.

It is important to recognize that while religious teachings and cultural beliefs play a significant role in shaping attitudes towards same-sex relationship and marriage, societal perspectives have evolved in recent times. It is essential to approach the topic with sensitivity, respect, and understanding of the diverse perspectives within and beyond religious frameworks.

PART II

Examination of countries where same-sex marriage is legally recognized and where it not recognized

The present status of same-sex marriage in various countries has become a crucial aspect to consider. Over the past few decades, significant transformations have been witnessed in the institutions of marriage and family, especially during the latter half of the twentieth century. Simultaneously, non-traditional arrangements such as cohabitation, nonmarital childbearing, and interracial and interreligious relationships have gained acceptance, particularly in Western societies. Despite long-standing societal prudishness and historical hostility towards homosexuality, there have been notable developments in attitudes towards same-sex relationships. During the late Soviet period, a group of legal scholars emerged who advocated for the decriminalisation of consensual sodomy, challenging the prevailing norms surrounding sex and homosexuality. These individuals played a crucial role in pushing for more progressive views on same-sex relationships within their respective societies. One significant consequence of the changing societal perspectives on same-sex relationships has been the demand for legal recognition of same-sex couples. This has led to a remarkable shift in granting legal status to same-sex marriages in various countries. In numerous Western countries, there has been a gradual recognition and acceptance of same-sex marriages, with laws enacted to provide equal marriage rights to all couples, regardless of their sexual orientation. Countries such as Canada, the Netherlands, Belgium, Spain, and South Africa have been at the forefront of legalising same-sex marriages. These progressive steps have allowed same-sex couples to enjoy the same legal rights, benefits, and protections as heterosexual couples within the institution of marriage.

However, it is important to acknowledge that not all countries have embraced the legal recognition of same-sex marriages. Many nations, particularly those influenced by conservative religious and cultural beliefs, continue to prohibit or restrict same-sex marriages. In some instances, these countries may offer alternative legal arrangements such as civil partnerships or domestic partnerships, which provide limited legal rights and benefits to same-sex couples. However, these alternatives often fall short of granting full equality and recognition to same-sex relationships.

Now let's look at some of the countries and status of same sex marriage/ relationship in those countries.

USA

California

was the first state to enact a state-wide process to recognize same-sex couples when **it created its domestic partnership registry in 1999**. Domestic partnership offered California same-sex couples some of the benefits normally associated with marriage, namely, hospital visitation rights and the ability to be considered next of kin when settling the estate of a deceased partner.

Vermont

In 2000, enacted **civil unions**, a status designed specifically for same-sex couples to give them a broader set of rights and responsibilities akin to those associated with marriage/ Globally, marriage or some other form of legal recognition through civil or registered partnerships is now widely available to same-sex couples across northern, western, and central Europe.

RUSSIA

The fall of the Soviet Union was accompanied by the liberalisation of society, including the **legalisation of homosexuality in 1993**. A few years later, Russian criminal law made heterosexual and same-sex relations equal in terms of the age of consent and punishments for crimes (previously, there was a clear distinction, with homosexual sexual assault incurring a harsher penalty). In 2008, Russia also repealed its ban on gay men donating blood.

Belgium

Same-sex marriage in Belgium has been legal since 1 June 2003. A bill for the legalization of same sex marriage was passed by the Senate on 28 November 2002 and by the chamber of representatives on 30 January 2003. It entered into force on 1 June, after King Albert II gave his royal assent. In Belgium, the law of 13 February 2003 had opened civil marriage to persons of the same sex. The law was published in the Moniteur Belge on 28 February 2003. Since June 1, 2003, Civil marriages for same sex couples were enabled by **Article 143 of the Belgian Civil Code**.

The country had one of the first openly gay Prime Ministers, Elio Di Rupo, as well as two openly gay Ministers.

Same sex couples gained the right to marry or register in civil union in 2003 and the right to adopt children in 2006.

Article 143 of the Belgian Civil Code: A marriage can be entered into by two unmarried persons of the opposite or same-sex (Art. 143 Belgian Civil Code) who are not too closely related (Art. 161-164 Belgian Civil Code) and have reached the age of majority. A court dispensation as to the marriageable age is possible (Art. 144, 145 and 148 Belgian Civil Code).

Recent developments

Currently, 30 out of the 46 member states of **council of Europe** legally recognize same-sex unions, the remaining 16 include – Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Latvia, Lithuania, the republic of Moldova, North Macedonia, Poland, Romania, Serbia, Slovakia, Türkiye and Ukraine.

Not in Favour of same sex marriage

CHILE

Chile is a South American Country where predominantly Christianity is followed by most of the population.

Chile had previously recognized same-sex couples in the form of civil unions only. Civil unions, known as acuerdo de unión civil (AUC) in Spanish, are offered to all couples regardless of sexual orientation, providing some, but not all the rights of marriage. The first civil unions were registered on 22 October 2015.

On 10 June 2016, the Third Chamber of the Court of Appeals of Santiago rejected another lawsuit filed by the LGBT group MOVILH. The court ruled that as Chilean legislation did not permit same-sex marriages, the civil registry could not marry same-sex couples. It also held that opening marriage to same-sex couples was a decision for Congress and not for the courts.

(Source: Wikipedia)

CHINA

China is an East – Asian Country where the majority of the population are Secular in matters of religion. Since ancient times, Chinese culture has been heavily influenced by Confucianism.

Court Rulings:

On 5 January 2016, a court in Changsha, southern Hunan Province, agreed to hear a lawsuit filed in December 2015 against the Bureau of Civil Affairs of Furong District. This litigation was believed as the first case of gay marriage right in mainland China. The lawsuit was filed by 26-year-old Sun Wenlin, who in June 2015 had been refused permission by the bureau to marry his 36-year-old partner, Hu Mingliang. On 13 April 2016, with hundreds of same-sex marriage supporters outside, the Changsha court ruled against Sun, who said he would appeal. On 17 May 2016, Sun and Hu were married in a private ceremony in Changsha, expressing

their intention to organize another 99 same-sex weddings across the country in order to normalize same-sex marriage in China.

Legal Status of Same Sex Marriage:

China recognizes neither same-sex marriage nor civil unions. When the ‘Marriage Law’ of the People’s Republic of China was enacted in 1980, Article 2 stipulated: ‘A marriage system based on the free choice of partners, on monogamy between a husband and a wife, and on equality between men and women shall be applied.’ Although there is no explicit prohibition of same-sex marriage in the article, it has been interpreted that the law does not recognize same-sex marriage, because in the Chinese context it is understood that ‘one husband and one wife’ refers to one man and one woman.¹⁴

❖ Case Study of Countries In favour of Same Sex relationship

i. Canada

Examination of the legal and societal implications of same-sex marriage¹⁵

The practical benefits of legal marriage for same-sex couples include those related to family law, pension and health benefits, income tax, inheritance and power of attorney, and immigration law. These rights are afforded immediately to married couples without the waiting period required of common-law couples. Same-sex married couples are bound by the same responsibilities as heterosexual married couples including decision-making in medical or legal emergencies, spousal support, child support, and division of property upon dissolution of marriage. A recent survey of 558 individuals in same-sex marriages in Massachusetts conducted by the Massachusetts Department of Public Health (Ramos, Goldberg, & Badgett, 2009) found that 85% of participants listed legal recognition as one of their top three reasons for getting married. In a phenomenological study of 22 married or soon to be married same-sex couples from Canada and around the world, Alderson (2004) highlighted the importance of practical and legal benefits to the couples interviewed. The legal benefits that these couples identified as having had a particularly significant impact in their relational lives were the opportunities to create families through adoption, to automatically have the right to care for a partner in the case of illness or injury, and to act on other legal matters.

¹⁴ Source: ([ishq.ch/22/02/2022/Legal provisions and comparative research on same-sex marriage in China – insights from a Chinese lawyer](http://ishq.ch/22/02/2022/Legal-provisions-and-comparative-research-on-same-sex-marriage-in-China-insights-from-a-Chinese-lawyer))

¹⁵https://www.researchgate.net/publication/230822405_Same-Sex_Marriage_in_Canada_The_Impact_of_Legal_Marriage_on_the_First_Cohort_of_Gay_and_Lesbian_Canadians_to_Wed?enrichId=rgreq-e13f2c10119d79852be352a36ef9df6c-XXX&enrichSource=Y292ZXJQYWdlOzIzMDgyMjQwNTtBUzo5ODk4MDA5NjY0MzA3OEFAxNDAwNjFwMTAyNDUx&el=1_x_3&esc=publicationCoverPdf

ii. USA

Perceived psychosocial impacts of legalized same-sex marriage: A scoping review of sexual minority adults' experiences¹⁶

Studies identified positive psychosocial impacts of same sex marriage (e.g., increased social acceptance, reduced stigma) across individual, interpersonal (dyad, family), community (sexual minority), and broader societal levels. Studies also found that, despite equal marriage rights, sexual minority stigma persists across these levels. Research to date has several limitations.

ANALYSIS

The legal recognition of same-sex marriage varies significantly across different countries. Some countries have embraced same-sex marriage and granted equal rights and benefits to same-sex couples, while others have not recognized or legalized same-sex marriage. Countries where same-sex marriage is legally recognized have taken significant steps toward promoting equality and providing legal protections for same-sex couples.

The legal recognition of same-sex marriage in these countries has provided same-sex couples with the same legal rights and benefits as heterosexual couples, including property rights, inheritance rights, parenting rights, and access to healthcare and social benefits. It has also contributed to greater societal acceptance and reduced stigma towards same-sex relationships. However, many countries still do not legally recognize same-sex marriage. In some cases, these countries have implemented alternative legal frameworks such as civil unions or registered partnerships that provide some legal protections but do not grant full marriage rights. Examples include Russia, China, Chile, and many countries in Eastern Europe and Asia.

In countries where same-sex marriage is not legally recognized, same-sex couples often face legal and societal challenges. They may encounter difficulties in accessing legal rights and protections, face discrimination in areas such as employment and housing, and lack societal acceptance and support.

It is important to note that attitudes and laws regarding same-sex marriage are evolving, and the legal landscape is subject to change. Advocacy efforts, court rulings, and societal shifts can influence the recognition of same-sex marriage in different countries.

Overall, the legal recognition of same-sex marriage has been a significant step towards promoting equality and inclusivity. It provides legal protections and benefits to same-sex couples, contributes to societal acceptance, and challenges discriminatory norms and practices. However, there is still work to be done to achieve full global recognition and acceptance of same-sex marriage.

¹⁶ <https://doi.org/10.1371/journal.pone.0249125>

PART III

Contemporary developments

i. Arguments present in favour of same sex marriage

The current push for legalizing same-sex marriage stems from a variety of reasons rooted in principles of equality, freedom, and social progress. Advocates argue that legal recognition of same-sex marriage is a crucial step towards achieving equal rights and protection for LGBTQ+ individuals and couples. By granting legal recognition, same-sex couples can receive the same rights, benefits, and responsibilities as heterosexual couples, promoting inclusivity and reducing discrimination based on sexual orientation. Legalizing same-sex marriage provides LGBTQ+ couples with the much-needed validation and acceptance from society. It affirms their right to love and form committed partnerships without fear of societal rejection or prejudice. This recognition helps to reduce the stigma and marginalisation often experienced by LGBTQ+ individuals, fostering a more inclusive and accepting society.

Furthermore, legalizing same-sex marriage would ensure that all citizens, regardless of their sexual orientation, are treated equally under the law. It upholds the fundamental values of equality, freedom, and individual rights enshrined in many constitutions worldwide. From a practical perspective, legalizing same-sex marriage offers tangible benefits to LGBTQ+ couples. It provides them with legal protections and rights in areas such as inheritance, property ownership, healthcare decision-making, and adoption. By granting equal access to these legal benefits, same-sex couples can enjoy financial and social security, create stable family structures, and build a life together with the same legal recognition and protections afforded to heterosexual couples.

ii. Arguments present in society against same sex marriage

However, opposition to same-sex marriage remains present, largely driven by religious, cultural, and conservative beliefs. Some opponents argue that marriage should be exclusively between a man and a woman based on religious teachings or traditional definitions of marriage. They express concerns about the potential impact on religious freedom and the perceived erosion of traditional family values.

Additionally, cultural and societal norms play a significant role in opposing same-sex marriage. Societies with deeply ingrained cultural and religious beliefs may resist change and view same-sex relationships as deviating from traditional norms. These opposing viewpoints often result in heated debates and legal battles surrounding the recognition and legalization of same-sex marriage.

4. **The Grand Mufti of India, Sheikh Abubakr Ahmad**, has said that any form of marital relationship that is not between man and woman “is against natural law and impermissible”.

With this we can further delve deep into this subject by understanding some of the Prominent voices ranging from Judiciary to Social leaders to leaders from different aspects of lives.

- **RETIRED JUDGES & BUREAUCRACY’S OPINION**

Not in favour of same sex marriage

1. 21 former judges opposed the same sex marriage, they released their open letter on March 24 in response to a Supreme Court decision to hear the final arguments on granting recognition to same-sex marriages on April 18.²⁰ Aside from claiming that same-sex marriages pose a threat to Bharatiya traditions, the retired judges also said that the prevalence of HIV – the AIDS virus – would rise if same-sex marriages were to be legalised, basing this argument on data from the US Centres for Disease Control and Prevention which said that 70% of new HIV-AIDS cases are amongst gay and bisexual men. Other objections made by the 21 retired judges included the fear that children from homosexual marriages will suffer from grave emotional and psychological traumas. They prominently mentioned that granting legal sanction to relationship is a function of the legislature, not the judiciary.
2. Various bureaucrats, retired judges and others (in total a group of 120) collectively wrote a letter to the president expressing their concerns and opposing same sex marriage. The content of the letter has been attached below: *“We feel that the sacred institution of marriage under our cultural traditions can possibly be tinkered with only on the basis of comprehensive public opinions; in the Parliament, where the people’s representatives will have their say. Since times immemorial, we have a tradition of samvaad and shastrarth - to inquire into and deliberate upon the greater good of our society. Instead of having wide-ranging discussions and deliberations amongst the various stakeholders, and without there being any vociferous demand from any section of the society, any hasty judicial intervention scares us of its consequences: disastrous shredding of our age-old cultural traditions, values and religious tenets. As per our values, “Dharma must be practised by man together with his wife and offspring”. “He is only perfect who consists of his wife and offspring.”*²¹²²

²⁰ <https://thewire.in/law/at-least-11-of-21-former-judges-opposing-same-sex-marriage-are-not-as-sanskari-as-they-seem>

²¹ <https://www.theweek.in/news/india/2023/04/28/retired-judges-former-bureaucrats-write-to-president-murmu-opposing-same-sex-marriages.html>

²² <https://www.opindia.com/2023/04/120-eminant-citizens-write-to-president-draupadi-murmu-opposing-same-sex-marriages/>

● LEADERS' & ORGANISATIONS' VIEWS

Not in favour of same sex marriage

3. In December 2022, **BJP leader Sushil Modi** termed the campaign for same-sex marriage recognition a “left-liberal” ploy to change “ethos of India”. He also questioned the role of Judiciary in the matter.
4. According to **Samwardhini Nyas**, nearly 70 per cent of the doctors and allied medical professionals stated that “homosexuality is a disorder” while 83 percent of them “confirmed transmission of sexual disease in homosexual relations”.²³
5. **The National Commission for Protection of Child Rights (NCPCR)** opposed the conferral of adoption rights on same-sex couples. Interestingly, the Delhi-CPCR batted for the petitioners, emphasising the need for a gender-neutral approach towards issues concerning adoption, maintenance and custody.²⁴
6. **Anupriya Patel of the Apna Dal (Sonelal)**, who was the Union Minister of State for Health, defended the exclusion of single and gay people by saying, A child needs a normal family, a mother and father,” said the Pink List India.²⁵

Neutral views on same sex relationship

7. **Kiren Rijiju**, Union Law Minister, has said that, as the Supreme Court hears a petition asking for legal sanction for same-sex marriages, such important issues as marriage are best decided by the people of the country, not by the courts. He, however, clarified that he does not want to make the matter a “government versus judiciary” issue. Responding to a question at the Republic TV conclave, he said, “It is a matter which concerns every citizen of India. It is the question of people's will. The will of the people is reflected in Parliament or the legislature or assemblies”. The law minister further said that sensitive and important matters like the institution of marriage have to be decided by the people of the country.²⁶
8. **RSS chief Mohan Bhagwat** also made his organisation’s position on such issues clear. The RSS and Bhagwat felt that people from the LGBT community (the lesbian, gay, bisexual and transgender) should have their own space and feel that they are part of society and have the right to live as others. In an interview, RSS

²³ <https://www.outlookindia.com/national/rss-body-survey-on-homosexuality-dangerous-misleading-lgbtq-activists-news-284564>

²⁴ https://www.outlookindia.com/national/how-far-will-the-courts-go--magazine-282163?utm_source=related_story

²⁵ <https://www.outlookindia.com/national/govt-has-no-intention-to-recognise-same-sex-marriages-says-lawyer-citing-independent-research-news-281282>

²⁶ https://www.outlookindia.com/national/same-sex-marriage-rijiju-says-to-be-decided-by-people-court-no-place-to-settle-such-matters-news-281560?utm_source=related_story

Chief cites specifically from Mahabharat and other religious texts and mythologies form where he justifies the basis of the organisation's beliefs that a space should be provided for same sex couple.²⁷

9. **Home minister Amit Shah** comments *"The government has presented its view clearly in the form of the affidavit in the Supreme Court. I believe that the affidavit itself is very clear. Now that the Supreme Court is debating it, it does not make sense for me to comment on it as a cabinet minister."*²⁸

In favour of same sex relationship

10. **Kavya Menon**- is an Indian LGBTQ+ activist who has been a vocal supporter of same-sex marriage. She has argued that the recognition of same-sex marriage is a matter of equality and human rights, and has worked to raise awareness about LGBTQ+ issues in India.
11. **Harish Iyer** - **Not asking for new law but a more inclusive interpretation**, - Everyone under the sky should have equal rights. Marriage should not be a heterosexual privilege but a choice for everybody regardless of gender.²⁹ Harish further said *"We are a country that does not only stand for its majority, but even if I am the only one, who happens to love differently, my love is valid. As long as I am an adult and I love another person and wish to go ahead by calling that relationship a marriage within the Special Marriage Act, I think I should be allowed to do so."*
12. **Dutee Chand** on same sex marriage: *"I feel everyone should get this right,"³⁰ India's fastest-ever woman, Dutee spoke at length on why same-sex couples needed the right to marry. "In every sector [of life], we need security, a guardian. Whether it's in education or jobs, we need one. We are partners now, we can stay together; there are no problems. But in the future -- things will not remain like this, will they?"*

The push for legalizing same-sex marriage and understanding gender has multiple factors, including changing societal attitudes towards LGBTQ+ rights and equality. The origin and evolution of gender are linked to social, cultural, and academic developments. Historically, gender was seen as a binary system based on biological sex, but awareness of diverse experiences led to the recognition of its complexity. Gender evolved to include social,

²⁷ https://www.outlookindia.com/national/-news-281860?utm_source=related_story

²⁸ <https://www.outlookindia.com/national/there-should-be-public-debate-our-affidavit-is-clear-we-do-not-agree-home-minister-amit-shah-on-same-sex-marriages-news-280525>

²⁹ <https://www.financialexpress.com/india-news/same-sex-marriage-equality-supreme-court-lgbt-gay-rights-harish-iyer/3060589/>

³⁰ https://www.espn.in/athletics/story/_/id/37612269/i-feel-everyone-get-right-dutee-chand-same-sex-marriage-supreme-court

cultural, and psychological influences, expanding beyond the binary. People identifying as transgender, non-binary, or genderqueer don't conform to male or female categories and may have fluid gender identities. This expanded understanding of gender influenced the recognition of same-sex relationships, challenging the idea of restricting marriage to opposite-sex couples. Advocates argued that not recognising same sex relationships and marriage was discrimination based on gender and sexual orientation. Opposition often arises from religious, cultural, or conservative beliefs upholding traditional marriage views. Acceptance of gender fluidity and same-sex marriage varies across cultures and regions. It's a complex and evolving topic with countries legalizing same-sex marriage while others struggle with acceptance.

ANALYSIS

The push for legalizing same-sex marriage and recognizing gender fluidity has gained momentum due to several factors, including changing societal attitudes, the recognition of LGBTQ+ rights and equality, and the evolving understanding of gender.

Advocates of same-sex marriage argue that legalizing same sex marriage provides equal rights and protections to LGBTQ+ couples. They emphasize that it aligns with the principles of secularism and democracy, ensuring equality and freedom for all individuals. Legal recognition of same-sex marriage offers social acceptance, reduces discrimination, and promotes a more inclusive society. It provides financial and social security benefits, such as joint ownership, medical insurance, and visa applications, to same-sex couples.

The majority which opposes same-sex marriage often base their arguments on religious, cultural, or conservative beliefs. They argue that same-sex marriage deviates from traditional understandings of marriage as a union between a man and a woman. Some express concerns about the impact on children raised by same-sex couples, citing potential emotional and behavioural problems. They believe that legalizing same-sex marriage threatens cultural and religious traditions and values.

It is important to note here that some of the retired judges and bureaucrats have also expressed their opposition to same-sex marriage, raising concerns about the erosion of cultural traditions, the impact on children, and the need for legislative decision-making rather than judicial intervention. They argue that granting legal recognition to same-sex marriage should be the prerogative of the legislature.

Overall, the push for legalizing same-sex marriage and recognizing gender fluidity involves complex dynamics between legal, societal, religious, and cultural factors. The opinions expressed by various leaders and organisations reflect diverse perspectives, highlighting the ongoing debate and evolving understanding of these issues. As the understanding of gender and societal attitudes continue to evolve, the legal landscape surrounding same-sex marriage is likely to undergo further changes in the future.

PART IV

Relevant Indian Judgements

In the Indian context, the recognition and acceptance of same-sex marriage, in the society have set up significant milestones in the pursuit of equality and human rights for LGBTQ+ individuals worldwide. In the Indian context, during the journey towards marriage, equality has been marked by a series of legal battles, driven by social leaders, activists, and judicial interventions. This study will delve upon four prominent legal cases that have played a crucial role in shaping the discourse around same-sex relationship and marriage in India. These cases include NALSA v. UOI, Naz Foundation v. Govt of NCT of Delhi, Suresh Kumar Koushal & Ors v. Naz Foundation, and K.K. Puttaswamy & Anrs v. UOI & Ors.

- **Naz Foundation v. Govt of NCT of Delhi (2009)³¹:**

It was held that treating consensual sex between two adults as a criminal act is a violation of Fundamental rights including the right to equality, non-discrimination, privacy, and personal liberty. This verdict resulted in de-criminalisation of homosexual acts involving consenting adults throughout India. In this case, the Delhi High Court declared the un-constitutional part of section 377 IPC that criminalises consensual sexual acts of adults in private.

- **Suresh Kumar Koushal & Ors v. Naz Foundation (2013)³²:**

Naz Foundation was not challenged by the UOI, it was challenged by one Suresh Kumar Kaushal. The Supreme Court overturned the Delhi High Court's Naz Foundation judgement and upheld the validity of Section 377 by stating that it doesn't suffer from the voice of unconstitutionality. The reason given in the judgement was very miniscule fraction of country's population constitutes LGBTQI+ as such reliance on international precedents was not appropriate. In para 77 it states that *"In its anxiety to protect the so-called rights of LGBTQI+ persons and to declare that section 377 IPC violates the right to privacy autonomy and dignity the High Court has extensively relied upon the judgements of other jurisdiction, though these judgements shed considerable light on various aspects of this right are informative in relation to the plight of sexual minority, we feel that they cannot be applied blindfolded"*

- **NALSA v. UOI (2014)³³:** The case filed by NALSA which sought to recognise the rights of transgender people in India and to provide them with recognition and protection and it recognized transgender persons as a "third gender" and affirmed their fundamental rights under the Indian Constitution. The court held that the transgender people should be treated as socially and economically backward classes and directed

³¹ 2009 SCC OnLine del 1762

³² (2014) 1 SCC 1

³³ National Legal Service Authority v. Union of India (2014) 5 SCC 438

the govt, to take steps to provide them with affirmative action including reservation in education and in employment.

- **K.S. Puttaswamy & Anrs v. UOI & Ors (2018)³⁴:**

A nine judges' bench of the Supreme court dealt with the right to privacy and imposed an obligation upon the state to protect informational privacy by bringing a viable data protection regime. Privacy has both positive and negative content. Negative content restrains the state from committing an intrusion upon the life and personal liberty of the citizen; its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual. It was held that the right to privacy was held as a fundamental right under Article 14, 19 and 21 of the constitution of India. It was clarified that the right to privacy can be infringed only where there are compelling state interests for doing that. The position is the same as with the other fundamental Rights.

- **Navtej Singh Johar vs Union of India³⁵**

This case was filed by five people in 2016 challenging the constitutionality of section 377 IPC ³⁶, In this case petitioners argued that they are directly aggrieved by section 377 i.e., violation of their fundamental rights the opposition to decriminalisation was by many. The Govt. took a neutral stand leaving the decision to the wisdom of court as long as it applies to "*consensual acts of adults in private*". The case was referred to a five judges' constitutional bench.

"The doctrine of progressive realization of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. As per this doctrine, there must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. Society has to march ahead."

"That apart, swayed by data, Suresh Koushal fails to appreciate that the sustenance of fundamental rights does not require majoritarian sanction"

The bench unanimously found that the criminalization of sexual acts between consenting adults is violative of Article 14, 15, 19 and 21 of the constitution of India.

Justice Indu Malhotra laid down "*Homosexuality is not aberration of sexuality but variation of sexuality*"

"Fundamental rights are guaranteed to all citizens alike irrespective of whether they are of numerical minority. Modern democracies are based on the twin principles of

³⁴ (2019) 1 SCC 1

³⁵ (2018) 10 SCC 1

³⁶ Section 377 IPC

majority rule, and protection of fundamental rights guaranteed under Part III of the Constitution. Under the Constitutional scheme, while the majority is entitled to govern; the minorities like all other citizens are protected by the solemn guarantees of rights and freedoms under Part III. Modern democracies are based on the twin principles of majority rule, and protection of fundamental rights guaranteed under Part III of the Constitution. Under the Constitutional scheme, while the majority is entitled to govern; the minorities like all other citizens are protected by the solemn guarantees of rights and freedoms under Part III."

- **Supriya Chakraborty & Abhay Dang v. Union of India**³⁷

The Petitioners consist of queer couple prayed for declaring a special marriage act 1954 ought to apply to “*A marriage between any two persons' ' regardless of their gender identities and sexual orientation. This matter is being heard by a Constitutional bench of five Judges headed by the Chief Justice of India. Many organisations and States have moved intervening applications to oppose the rights, the matter is subjudice and fixed for order.*

Relevant Foreign Judgements

In the ever-evolving landscape of human rights and equality, significant legal cases often serve as milestones that shape societal perceptions and judicial interpretations. This section of the study delves into the jurisprudential significance of the landmark judgments, shedding light on the progression towards greater inclusivity and recognition of fundamental human rights outside India.

- **Obergefell v. Hodges, 576 U.S 644 (2015)**³⁸

In the landmark case of Obergefell v. Hodges (2015), the U.S. Supreme Court issued a momentous decision affirming the fundamental right of same-sex couples to marry under the Constitution's Equal Protection and Due Process Clauses. This verdict followed a history of legal battles wherein same-sex couples from various states, including Ohio, Michigan, Kentucky, and Tennessee, challenged laws that denied them the right to marry and recognition of their out-of-state marriages.

The Court's decision, authored by Justice Anthony Kennedy, bore significant weight, as it legalized same-sex marriage nationwide, thereby eliminating disparities in marriage rights across states. Justice Kennedy's poignant words, "No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family," underscored the profound significance of marriage as a fundamental human right. Additionally, the Court affirmed, "The Constitution grants

³⁷ W.P.(C) No. 001011/ 2022

³⁸ Obergefell v. Hodges, 576 U.S 644 (2015)

them that right," underscoring the unequivocal entitlement of same-sex couples to marry.

- **Halpern v. Canada (AG), [2003] O.J. No. 2268 (Ont. C.A.)³⁹**

In the landmark legal proceeding of *Halpern v. Canada (AG)*, the Ontario Court of Appeal was tasked with a profound inquiry into the constitutionality of the traditional legal construct defining marriage as an exclusive covenant between individuals of opposite sexes, as enshrined within federal legislation. The case was provoked by the earnest endeavours of two same-sex couples who, while seeking to secure matrimonial licences within the jurisdiction of Ontario, encountered rejection grounded in the orthodox understanding of marital unions. The core issue under scrutiny pertained to whether this time-honoured delineation of marriage transgressed the constitutional boundaries set forth by the Canadian Charter of Rights and Freedoms, thereby infringing upon the hallowed principles of equality before the law.

Through a momentous adjudication, the Court ruled in favour of the same-sex couples, articulating that the conventional definition of marriage, confined to opposite-sex partnerships, indeed transgressed the tenets of the Constitution. The Court expounded on this assertion with judicial sagacity, stating, "The couples, in this case, are not seeking the right to marry. Rather, they seek the right to marry a person of the same sex. The right they claim does not transcend the traditional boundaries of the institution of marriage." The Court, with astute discernment, further emphasized, "It follows that the opposite-sex requirement in the civil marriage legislation constitutes a violation of the equality rights of the same-sex couples."

- **Chantelle Day and Vickie Bodden Bush v. Cayman Islands CICA No. 9 of 2019 (7 November 2019)⁴⁰**

In this landmark case of *Chantelle Day and Vickie Bodden Bush v. Cayman Islands*, a historic legal pursuit unfolded as a same-sex couple, represented by Edward Fitzgerald, QC, and Peter Laverack, challenged the Cayman Islands' marriage law. The chief justice, Anthony Smellie, delivered a pivotal ruling deeming the law unconstitutional. This decision was underpinned by the principle that denying same-sex couples the right to marry contradicts their fundamental rights to privacy, family life, conscience, and equality.

As Chief Justice Smellie eloquently stated, "The couples, in this case, are not seeking the right to marry. Rather, they seek the right to marry a person of the same sex. The right they claim does not transcend the traditional boundaries of the institution of marriage." Moreover, "It follows that the opposite-sex requirement in the civil marriage legislation constitutes a violation of the equality rights of the same-sex

³⁹ *Halpern v. Canada (AG)*, [2003] O.J. No. 2268 (Ont. C.A.)

⁴⁰ *Chantelle Day and Vickie Bodden Bush v. Cayman Islands CICA No. 9 of 2019* (7 November 2019)

couples." This landmark verdict not only advances LGBTQ+ rights but also heralds a transformative era of human rights-based progress in the Caribbean's legal landscape.

Analysis

The legal battles surrounding same-sex marriage in India have been emblematic of the evolving social and legal landscape. These cases reflect the journey towards recognition, acceptance, and equality for LGBTQ+ individuals. While the fight for marriage equality is ongoing, these legal milestones have laid the groundwork for progress and shaped public discourse. They have highlighted the importance of recognizing the fundamental rights of LGBTQI+ individuals, challenging discriminatory laws, and promoting inclusivity and diversity in Indian society. As India continues to strive for a more inclusive and equitable society, these legal victories serve as beacons of hope and inspiration for the LGBTQ+ community and their allies.

As per the Constitutional framework the state has an obligation to take appropriate measures for the progressive realisation of economic social and cultural rights, the society has to march ahead in a progressive and an ever-improving society there is no place for retreat. Suresh Kaushal was allowed and assumed criminality on the bedrock being guided by a sense of social morality. The balance between popular morality and the concept of privacy, individual choice and orientation “*Suresh Kaushal fails to appreciate that the sustenance of fundamental rights does not require majoritarian sanctions*”.

Transgender Persons (Protection of Rights) (TG) Act, 2019

The TG Act, or the Transgender Persons (Protection of Rights) Act, 2019, is a significant legislation in the Indian context, aimed at safeguarding the rights and welfare of transgender individuals. While the Act primarily focuses on recognizing and protecting the rights of transgender persons.

The Act primarily concerns the rights of transgender individuals, including their self-identified gender, non-discrimination, and access to healthcare, education, and employment. However, the Act does recognize the right to self-perceived gender identity, which can indirectly contribute to the overall discourse surrounding gender and sexual orientation.

CONCLUSION

This comprehensive study has explored the different facets of religious, cultural, and legal perspectives surrounding same-sex relationships and marriages within Hinduism, Christianity, and Islam. The analysis has revealed that these major global faiths generally bend towards finding same-sex relationships as sinful, prohibited, or against the natural order ignoring a few of the mentions otherwise.

It is important to note that discussions around same-sex marriage in India are evolving, and societal attitudes towards LGBTQ+ rights are gradually progressing. The legal landscape is also subject to change as public opinion and activism continue to shape the conversation. While the TG Act does not address same-sex marriage, it can be seen as a stepping stone towards a more inclusive and equitable society.

The opposition voiced by religious leaders and opinion-makers, consider same-sex relationships immoral and fear that their recognition could encourage more individuals to embrace such orientations. It is important to recognize that homosexuality is a natural variation of human sexuality. No study has conclusively demonstrated a causal link between sexual orientation and exposure to same-sex relationships. As society progresses, it is imperative to respect and acknowledge individuals' choices, including those with different sexual orientations, and afford them the same fundamental rights enjoyed by others.

In various countries, significant strides have been made in recognizing same-sex relationships, unions, or marriages legally. The evolving legislative frameworks and landmark judgments in countries where same-sex marriage is recognized have made us perceive the need for continued legal reform to ensure equality and protection of same sex relationships or/and marriage rights globally.

This study has also shed light on India's legal landscape, where significant milestones have been achieved, such as the decriminalisation of consensual same-sex relationships, the recognition of transgender rights and right to privacy. While progress has been made, challenges persist, underscoring the ongoing struggle for same sex relationship and/or marriage rights and equality.

Based on this study, in order to foster a more inclusive and just society, the following recommendations are made for the State to implement:

- Introduce gender education that encompasses transgender and same-sex relationships in schools.
- Recognise same-sex couples/partner's inheritance and succession rights to each other's properties.
- Recognise same-sex couples' right to children.

As legal frameworks and societal attitudes continue to evolve, this study concludes that the journey towards full recognition of same-sex marriage and equality requires dedication, empathy, and a steadfast commitment to upholding human rights and dignity for all. By embracing respectful dialogue, fostering understanding, and implementing the recommended measures, society can progress further towards ensuring equality and safeguarding the rights of individuals in same-sex relationships. The evolution of societal attitudes and legal frameworks over time demonstrates the potential for positive change and emphasizes the significance of collective efforts in building a more inclusive world.



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